

48A C.J.S. Judges § 371

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

X. Special or Substitute Judges and Like Judicial Officers

C. Authority, Powers, and Duties of Special or Substitute Judge

§ 371. Authority of special or substitute judge as to particular case or cause

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After qualifying, a special judge ordinarily possess all the powers of the regular judge as to the case or cases for which the special judge has been selected.

If a special judge is selected for the purpose of hearing or presiding over a certain and specified case or cases, his or her jurisdiction is limited to the trial and determination of that particular case or cases¹ even though the court itself may have continuing jurisdiction.² A special judge has no authority in any other case or cause,³ although it may be between the same parties,⁴ or although it is ancillary to the principal action⁵ (i.e., heard on a separate record and seeking an independent judgment or reviewable order),⁶ unless he or she has been separately appointed to hear such connected case or proceeding.⁷ The terms of the written assignment may control when an assigned judge's authority terminates as to a specific case.⁸

Nevertheless, the special judge, after he or she qualifies, possesses all the powers of the regular judge as to the case or cases for which the special judge has been selected⁹ until it or they have been finally determined¹⁰ or until his or her designation is rescinded.¹¹ This is the rule regardless of the fact that the regular judge would be disqualified in such a matter¹² or that the reason for making the assignment of the special judge has ceased to exist.¹³

Upon designation of a substitute judge, the parties ordinarily are without power to limit the issues he or she may try¹⁴ although the power of a temporary judge who acts by consent of the parties may be restricted to issues designated by the parties.¹⁵ In any event, no express authority to issue contempt orders need be granted, as such authority is inherent in the trial court's power to exercise reasonable control over its proceedings.¹⁶

A special judge's power extends to matters with respect to the trial of the case,¹⁷ and to all matters therein subsequent to the verdict and judgment,¹⁸ including matters regarding the enforcement of the judgment,¹⁹ and, according to some authority, to matters of review and appeal.²⁰ A special judge's functions are, in fact, concluded only by the entry of a final judgment in the cause in which he or she is appointed.²¹

Modification of order.

During the term of court at which a special judge was selected and at which he or she made an order, the special judge may properly modify such order.²² However, where the jurisdiction of a special judge has terminated, he or she has no jurisdiction over a subsequent petition to modify his or her prior order.²³

Retrial of case.

It has been held that if the judgment rendered before a special judge is reversed on appeal, he or she has authority to retry the case,²⁴ however, there is also authority that the special judge may not retry the case after reversal.²⁵

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Footnotes

- 1 Ga.—Trammell v. Trammell, 220 Ga. 293, 138 S.E.2d 562 (1964).
Ky.—Wedding v. Lair, 404 S.W.2d 451 (Ky. 1966).
La.—State v. Price, 274 So. 2d 194 (La. 1973).
- 2 Ind.—Shanholt v. State, 448 N.E.2d 308 (Ind. Ct. App. 1983).
- 3 Cal.—Sarracino v. Superior Court, 13 Cal. 3d 1, 118 Cal. Rptr. 21, 529 P.2d 53 (1974).
Mont.—Wheeler v. Moe, 163 Mont. 154, 515 P.2d 679 (1973).
- 4 Ky.—Helton v. Com., 256 S.W.2d 14 (Ky. 1953).
- 5 Cal.—Sarracino v. Superior Court, 13 Cal. 3d 1, 118 Cal. Rptr. 21, 529 P.2d 53 (1974).
Contempt
Miss.—Barton v. Barton, 726 So. 2d 163 (Miss. 1998).
- 6 Cal.—Gridley v. Gridley, 166 Cal. App. 4th 1562, 83 Cal. Rptr. 3d 715 (1st Dist. 2008).
- 7 Cal.—Gridley v. Gridley, 166 Cal. App. 4th 1562, 83 Cal. Rptr. 3d 715 (1st Dist. 2008).
Contempt ancillary proceeding
Ark.—Hobson v. Cummings, 259 Ark. 717, 536 S.W.2d 132 (1976).
- 8 Tex.—Beard v. Beard, 49 S.W.3d 40 (Tex. App. Waco 2001).
- 9 § 367.
- 10 Cal.—Gridley v. Gridley, 166 Cal. App. 4th 1562, 83 Cal. Rptr. 3d 715 (1st Dist. 2008).

As to authority beyond term of court, see § 370.

Jurisdiction of special judge ended upon entry of final judgment

Mo.—*Wilson v. Sullivan*, 967 S.W.2d 225 (Mo. Ct. App. E.D. 1998).

Jurisdiction lost when special judge "unavailable"

Ind.—*Newman v. Bernstein*, 766 N.E.2d 8 (Ind. Ct. App. 2002).

11 N.D.—*State ex rel. Johnson v. Thomson*, 76 N.D. 125, 34 N.W.2d 80 (1948).

12 Tex.—*Ford v. Simmons*, 171 S.W. 1077 (Tex. Civ. App. San Antonio 1914).

13 Haw.—*Rohlfing v. Moses Akiona, Limited*, 45 Haw. 440, 369 P.2d 114 (1962).

14 Utah—*State v. McGee*, 24 Utah 2d 396, 473 P.2d 388 (1970).

15 Cal.—*Fine v. Superior Court*, 97 Cal. App. 4th 651, 119 Cal. Rptr. 2d 376 (2d Dist. 2002), as modified, (Apr. 11, 2002).

Utah—*State v. McGee*, 24 Utah 2d 396, 473 P.2d 388 (1970).

16 Cal.—*Fine v. Superior Court*, 97 Cal. App. 4th 651, 119 Cal. Rptr. 2d 376 (2d Dist. 2002), as modified, (Apr. 11, 2002).

17 Ga.—*Gainesville Buggy & Wagon Co. v. Morrow*, 23 Ga. App. 268, 98 S.E. 100 (1919).

Assessment of damages

Ky.—*Mills v. Broughton*, 396 S.W.2d 310 (Ky. 1965).

18 Ind.—*State v. Smith*, 260 Ind. 555, 297 N.E.2d 809 (1973).

"Direct progeny"

(1) Matters which are "direct progeny" of a cause assigned to a temporary judge for resolution, and thus subject to resolution by the temporary judge, are those which are a continuation of the stipulated cause or question its finality, such as motions to vacate or reconsider.

Cal.—*Gridley v. Gridley*, 166 Cal. App. 4th 1562, 83 Cal. Rptr. 3d 715 (1st Dist. 2008).

(2) Proceedings are the "direct progeny" of the cause for which the jurisdiction of a temporary judge has been stipulated, so that the temporary judge has stipulated jurisdiction to such proceedings, if they question the finality of the temporary judge's ruling or are part of the stipulated cause; they include motions for a new trial, to vacate due to mistake, inadvertence, or excusable neglect, or to reconsider the ruling.

Tex.—*Walker v. San Francisco Housing Authority*, 100 Cal. App. 4th 685, 122 Cal. Rptr. 2d 758 (1st Dist. 2002).

19 **Ruling on posttrial motions**

Ind.—*State v. Smith*, 260 Ind. 555, 297 N.E.2d 809 (1973).

20 Ind.—*State ex rel. Steers v. Criminal Court of Lake County*, 232 Ind. 443, 112 N.E.2d 445 (1953).

21 Ind.—*State ex rel. Cannon v. Bitzegaio*, 250 Ind. 516, 237 N.E.2d 366 (1968).

Wyo.—*Leitner v. Lonabaugh*, 402 P.2d 713 (Wyo. 1965).

Until rendition of final, appealable judgment

Wyo.—*Huckfeldt v. Huckfeldt*, 463 P.2d 927 (Wyo. 1970).

22 U.S.—Hagan v. State of Cal., 265 F. Supp. 174 (C.D. Cal. 1967).

23 Wyo.—Meyer v. Meyer, 538 P.2d 293 (Wyo. 1975).

24 Ind.—Woodsmall v. State, 181 Ind. 613, 105 N.E. 155 (1914).

25 Ky.—Helton v. Com., 256 S.W.2d 14 (Ky. 1953).

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Disqualification of original trial judge to sit on retrial after reversal or mistrial, 60 A.L.R.3d 176.

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